IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 264 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
JAYESHBHAI P KOLI - Opponent(s)

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Appearance :
MR HL JANI APP for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 29.12.1990 passed by the learned Judicial Magistrate, First

Class, Court No. 1, Surat in Criminal Case No. 4523 of 1987 whereby, the respondent – accused was acquitted of the charges levelled against him.

2.0 The brief facts of the prosecution case are as under;

2.1 On 21.06.1987 at around 1230 hrs. when the complainant returned home for taking lunch, a dispute took place between the complainant and his neighbors, which was subsequently settled between the parties. However, in the evening, at around 1700 hrs., the respondent, who is one of the relatives of the neighbors of the complainant, went to the place of work of the complainant. At the said place, the respondent met the mother of the complainant and he enquired from her about the reason behind the dispute which took place in the afternoon. In the midst of the conversation, the respondent got enraged and attacked the mother of the complainant with a knife (Gupti). As a result of the said attack, the mother of the complainant shouted. However, by that time, the respondent fled the scene of offence. The victim was then taken to the Hospital for necessary treatment.

2.2 A complaint with respect to the aforesaid offence was filed against the respondent before Varachha Police Station and it was registered as I – C.R. No. 124 of 1987. Necessary investigation was carried out and statements of several witnesses were recorded. During the course of investigation, as sufficient material was found against the respondent, he was arrested and, ultimately, charge-sheet was filed against him before the Court of

learned J.M.F.C., Surat. Trial was initiated against the opponent.

2.3 The prosecution has examined in all eight witnesses namely, PW – 1 Harisinh Kuwarsingh at Exhibit – 6, PW – 2 Savitaben Kuwarsinh at Exhibit – 23, PW – 3 Girdharilal Durgabhai at Exhibit – 26, PW – 4 Rameshbhai Ishwarbhai at Exhibit – 27, PW – 5 Mustaq Ibrahimbhai at Exhibit – 28, PW – 6 Venkat Madhavrao Jadav at Exhibit – 32, PW – 7 Kababhai Devrajbhai at Exhibit – 43and PW – 8 Ishwarbhai Ramanbhai at Exhibit – 44 and has also relied upon documentary evidence, more particularly, the complaint at Exhibit – 7. At the end of trial, the learned Magistrate acquitted the respondent of the charges levelled against him.

3.0 Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

4.0 In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in

such cases. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

5.0 Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.

6.0 The trial Court, after considering the entire oral as well as documentary evidence on record, has come to the conclusion that all the witnesses, on whose evidence the case of the prosecution was based, are interested witnesses and that neither of them was independent. Moreover, there were several contradictions in the evidence led by the prosecution witnesses in the form of their depositions before the Court below and in their statements given before the police. Thus, the evidence of not even a single witness was found to be reliable and trustworthy. Keeping in mind the entire evidence available on record, the trial Court, while granting the benefit of doubt to the respondent, acquitted him of the charges levelled against him.

7.0 In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

8.0 I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

9.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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